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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,301	07/11/2003	Rejean Gauthier		2648

7590 12/07/2004

INVENTARIUM  
4050 ROSEMONT BLVD  
#1607  
Montreal, QC H1X 1M4  
CANADA

EXAMINER

ODLAND, KATHRYN P

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/617,301	GAUTHIER, REJEAN
	<b>Examiner</b>	<b>Art Unit</b>
	Kathryn Odland	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 July 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-4 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-4 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in US Patent No. 5,613,250 in view of Glover in US Patent No. 5,010,597 or Adam in US Patent No. 5,469,637.

Regarding claim 1, Bell discloses a lower leg protector to protect the lower leg and top of foot. The protector has a top part, a bottom part and two lateral sides and the bottom part being in a generally pointed configuration so as to cover the top of a user's foot, as discussed in columns 3-5 and seen in figure 2 and a set of hook and pile straps (39a, 29b and 34-37) subdivided into hook ends and pile ends mounted on the lateral sides. However, Bell does not recite a visible marker with a strong visual indicia made of a highly reflective fluorescent type material highly visible under any light

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condition. On the other hand, Glover and Adam teach a leg protection device with reflective panels. Thus, it would be obvious to one with ordinary skill in the art to include a visible marker with a strong visual indicia made of a highly reflective fluorescent type material as taught by Glover or Adam for the purpose of enhanced visualization.

Regarding claim 2, Bell as modified by Glover or Adam disclose that as applied to claim 1. Further, a visual marker that is in the shape of an "X" would be considered an equivalent to any reflective configuration since the current application specification does not demonstrate the criticality for the "X" shape. In fact, page 4 of the current application specification states, "At the center of the reflecting lower leg protector (10) is a visible marker (24) which can be made in the shape of an 'X' or any other type of strong visual indicial."

Regarding claim 3, Bell as modified by Glover or Adam disclose that as applied to claim 1, as well as a lower leg protector using strong and resilient material suitable for protecting against projectiles, as recited by Bell in column 2, lines 39-45.

Regarding claim 4, Bell as modified by Glover or Adam disclose that as applied to claim 1, as well as a user fastens the hook and pile strap around the lower leg and places the bottom part on the top of the foot, as recited throughout the specification.

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4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallinot et al. in US Patent No. 5,970,525 in view of Glover in US Patent No. 5,010,597 or Adam in US Patent No. 5,469,637.

Regarding claim 1, Gallinot et al. disclose a lower leg protector (generally at 22 and associated components) to protect the lower leg and top of foot. The protector has a top part (such as @26), a bottom part (such as @25) and two lateral sides and the bottom part being in a generally pointed configuration so as to cover the top of a user's foot and a set of hook and pile straps (30 etc.) subdivided into hook ends and pile ends mounted on the lateral sides. However, Gallinot et al. do not recite a visible marker with a strong visual indicia made of a highly reflective fluorescent type material highly visible under any light condition. On the other hand, Glover and Adam teach a leg protection device with reflective panels. Thus, it would be obvious to one with ordinary skill in the art to include a visible marker with a strong visual indicia made of a highly reflective fluorescent type material as taught by Glover or Adam for the purpose of enhanced visualization.

Regarding claim 2, Gallinot et al. as modified by Glover or Adam disclose that as applied to claim 1. Further, a visual marker that is in the shape of an "X" would be considered an equivalent to any reflective configuration since the current application specification does not demonstrate the criticality for the "X" shape. In fact, page 4 of the current application specification states, "At the center of the reflecting lower leg

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protector (10) is a visible marker (24) which can be made in the shape of an 'X' or any other type of strong visual indicia."

Regarding claim 3, Gallinot et al. as modified by Glover or Adam disclose that as applied to claim 1, as well as a lower leg protector using strong and resilient material suitable for protecting against projectiles, as recited by Gallinot et al. in column 2, lines 5-13 and 40-55.

Regarding claim 4, Gallinot et al. as modified by Glover or Adam disclose that as applied to claim 1, as well as a user fastens the hook and pile strap around the lower leg and places the bottom part on the top of the foot, as recited throughout the specification and seen in the figures.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are as follows:

US 2004/0088772

US 2001/0002491

US Patent No. 6,205,593

US Patent No. 6,173,448

US Patent No. 5,172,493

Des. 365,667

GB 2 226 943.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (571) 272-4801. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KO

Henry Bennett  
Supervisory Patent Examiner  
Group 3700

